

REMARKS

Claims 1-49 are pending in the present application. In the Office Action dated June 18, 2004, the Examiner rejected claims 1-49 under 35 U.S.C. 251 for lack of reissuable errors and as lacking statutory basis.

In the first office action of the original patent application dated March 16, 1999, a restriction requirement was made. The Examiner determined that there were two classes of inventions. Class I: Claims 1-60, drawn to a method of CMP of a wafer using endpoint detecting means and Class II: Claims 61-71, drawn to an apparatus of CMP of a wafer. The Examiner further identified three distinct patentable species in the claims of Class I. Species (1) included claims 1-7, 17-42, 47-53, and 59-60, related to temperature sensor end-point detecting means. Species (2) included claims 15-16, 43-46, and 54, related to reactive agent end-point detecting means. Species (3) included claims 8-14, related to byproduct chemical analysis endpoint detecting means. In an amendment dated June 16, 1999, the Applicants elected to prosecute species (1) and subsequently cancelled the claims of species (2) and (3).

In the present reissue application, claims directed to the subject matter of the nonelected species (2) and (3) have been cancelled. As proposed to be amended, claims 14-15 are linking claims. Thus, as proposed to be amended, claims 14-15 are broad enough to link at least some of elected species (1) and nonelected species (3). The use of a linking claim in a reissue application to cover nonelected inventions that were cancelled during prosecution of the original patent application has been approved by the Court of Appeals for the Federal Circuit. (*See*, M.P.E.P. 1412.01 citing *In re Doyle*, 293 F.3d 1355, 63 USPQ2d 1161 (Fed. Cir. 2002)). Furthermore, the failure to assert a linking claim has been determined by the Court of Appeals for the Federal Circuit to constitute an error correctable by reissue. (*See*, M.P.E.P. 1412.01 citing *In re Doyle*, 293 F.3d 1355, 63 USPQ2d 1161 (Fed. Cir. 2002)). Therefore, the rejection of claims 14-15 under 35 U.S.C. 251 for lack of reissuable errors should be withdrawn.

With regard to claims 33 and 40-41, Applicants submit that the claims do not include subject matter of the nonelected species (2) and (3) which were cancelled during the prosecution of the original patent application. Therefore, the rejection of claims 33 and 40-41 under 35 U.S.C. 251 for lack of reissuable errors should be withdrawn.

All of the claims remaining in the application (claims 1-15, 33, and 40-41) are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,  
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Enclosures:

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